

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

	X	
In re:	:	Chapter 11
	:	
MERCY HOSPITAL, IOWA CITY, IOWA, et al.,	:	Case No. 23-00623 (TJC)
	:	
Debtors.¹	:	(Jointly Administered)
	:	
	X	

**RENEWED LIMITED OBJECTION AND RESERVATION OF RIGHTS OF OWENS &
MINOR DISTRIBUTION, INC. TO NOTICE OF ASSUMPTION AND ASSIGNMENT
OF EXECUTORY CONTRACTS OR UNEXPIRED LEASES AND CURE COSTS AND
NOTICE OF REVISED CURE COSTS WITH RESPECT TO CERTAIN POTENTIAL
ASSUMED CONTRACTS**

Owens & Minor Distribution, Inc. (“**O&M**”) submits this renewed limited objection and reservation of rights (the “**Renewed Objection**”) to the Debtors’ *Notice of Assumption and Assignment of Executory Contracts or Unexpired Leases and Cure Costs* [Docket No. 265] (the “**Cure Notice**”) and *Notice of Revised Cure Costs with Respect to Certain Potential Assumed Contracts* [Docket No. 625] (the “**Revised Cure Notice**”). In support of this Objection, O&M states as follows:

BACKGROUND

1. On August 7, 2023 (the “**Petition Date**”), the above-captioned debtors and debtors-in-possession (the “**Debtors**”) filed voluntary petitions for relief under Chapter 11 of Title 11 of

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number or business identification number, as applicable, are: Mercy Hospital, Iowa City, Iowa (0391, Mercy Services Iowa City, Inc. (1044), and Mercy Iowa City ACO, LLC (9472). The location of Mercy’s corporate headquarters and the Debtors’ service address is 500 E. Market Street, Iowa City, IA 52245.

the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the Northern District of Iowa (the “**Court**”).

2. On September 14, 2023, the Court entered an *Order (A) Approving Bidding Procedures for the Sale of the Debtors’ Assets, (B) Approving Break-Up Fee, (C) Scheduling an Auction for, and Hearing to Approve, the Sale of the Debtors’ Assets, (D) Approving the Form and Manner of Notice Thereof, (E) Approving Contract Assumption and Assignment Procedures, and (F) Granting Related Relief* [Docket No. 222] (the “**Bidding Procedures Order**”).

3. On September 20, 2023, pursuant to the Bidding Procedures Order, the Debtors filed the Cure Notice, which established October 2, 2023 at 4:00 p.m. (Central) as the deadline by which contract counterparties must file their objections to the Cure Notice (the “**Cure Objection Deadline**”).

4. On October 2, 2023, O&M timely filed its *Limited Objection and Reservation of Rights or Owens & Minor Distribution, Inc. to Notice of Assumption of Executory Contracts and Unexpired Leases and Cure Costs* [Docket No. 313] (the “**O&M Limited Objection**”), incorporated herein by reference, asserting a then-current cure cost of \$733,781.34 consisting of \$456,253.09 in pre-Petition Date goods (the “**Pre-Petition Cure Amount**”) and \$277,582.25 in post-Petition Date goods as set forth in the exhibits attached thereto.

5. On January 11, 2023, the Debtors filed the Revised Cure Notice correctly listing the Pre-Petition Cure Amount as \$456,253.09.

6. While the parties agree on the Pre-Petition Cure Amount, there remain unpaid invoices for post-Petition Date goods, which presently total \$496,160.05,² for a total cure amount

² The Debtors have asserted that payments have been made on some of the post-Petition Date invoices and O&M is in the process of verifying those payments.

of \$952,413.14. The parties are actively working to resolve payment on the post-Petition Date goods and O&M proposes to incorporate such resolution into a stipulation and agreed order.

7. O&M submits this Renewed Objection to the Cure Notice and Amended Cure Notice to require that the Debtors pay the outstanding balance of post-Petition Date goods delivered to the Debtor within five (5) business days of the closing of the contemplated sale such that the Pre-Petition Cure Amount is the entire proper cure amount or to update the Proposed Cure Amount to accurately reflect the cure amount to include the unpaid amount of the post-Petition Date goods delivered to the Debtor through the effective date of the assumption of the O&M Agreement with such unpaid post-Petition Date amount to be paid within five (5) business days of the closing of the contemplated sale as an administrative expense.

WHEREFORE, O&M respectfully requests (i) that any order entered that establishes the cure amount associated with the Agreement accurately reflect the proper cure amount and (ii) that the Court grant O&M such other and further relief as it deems just and proper.

Dated: January 19, 2024

Respectfully submitted,

/s/Nicholas F. Miller

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 19, 2024, a true and correct copy of the foregoing Objection was filed with the Court. All parties of record registered with the CM/ECF filing system will receive notification of such filing through CM/ECF. In addition, the undersigned hereby certifies that on January 19, 2024, a true and correct copy of the foregoing Objection was served on the parties on the attached Service List via electronic email, where an email address is indicated, and where no email address is indicated, by U.S. Mail.

/s/Nicholas F. Miller